

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF NEW YORK

07 CV 5624
JUDGE RAKOFF

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BOARD OF TRUSTEES OF THE 1199 SEIU
GREATER NEW YORK BENEFIT FUND and
BOARD OF TRUSTEES OF THE 1199 SEIU
GREATER NEW YORK EDUCATION FUND,

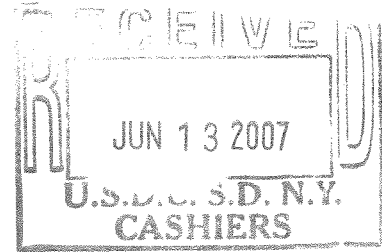
COMPLAINT

Plaintiffs,

v.

THE WANAQUE CENTER,

Defendant.
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INTRODUCTION

Plaintiffs Board of Trustees of the 1199 SEIU Greater New York Benefit Fund and Board of Trustees of the 1199 SEIU Greater New York Education Fund (together, the “Trustees”) bring this action to collect delinquent fringe benefit contributions that Defendant The Wanaque Center (the “Employer”) owes to the 1199 SEIU Greater New York Benefit Fund (the “Benefit Fund”) and the 1199 SEIU Greater New York Education Fund (the “Education Fund”). Plaintiffs bring this action pursuant to the Employee Retiree Income Security Act, 29 U.S.C. § 1001, as amended by the Multi Employer Pension Plan Amendments Act of 1980 (“ERISA”).

JURISDICTION AND VENUE

1. This court has jurisdiction over this action pursuant to 29 U.S.C. §1132.
2. Venue is proper in this district pursuant to 29 U.S.C. §1132(e)(2) because the Benefit Fund and the Education Fund are administered in this district.

THE PARTIES

3. The Benefit Fund and the Education Fund are employee benefit plans within the meaning of ERISA, 29 U.S.C. §§1002(2)(3) and are maintained to provide medical,

educational, and related benefits to eligible participants, their family members, and other beneficiaries.

4. The Benefit Fund and Education Fund (collectively, the “Funds”) are funded solely by employer contributions. Without those contributions, the Funds could not provide benefits.

5. Plaintiffs are the Boards of Trustees of the Benefit and Education Funds, and are fiduciaries within the meaning of ERISA, 29 U.S.C. §1002(A).

6. The Funds are administered at 330 West 42nd Street, New York, New York.

7. Plaintiffs bring this action on behalf of themselves, the Benefit Fund, the Education Fund, and the participants and the beneficiaries of the Funds pursuant to ERISA, 29 U.S.C. §§1132 and 1145.

8. Defendant is an employer in an industry affecting commerce within the meaning of ERISA, 29 U.S.C. §§1002(5), (11) and (12). It operates a nursing home and is located at 1114 Wynwood Avenue, Cherry Hill, New Jersey 08002.

Count 1 – Defendant’s Failure to Contribute To the Benefit Fund

9. At all relevant times, the Employer was a party to a collective bargaining agreement with 1199 SEIU United Health Care Workers East (“1199”) (the “CBA”) governing certain of its employees in effect from December 26, 2002 through September 30, 2007. The CBA is a contract between a labor organization and an employer and is a collectively bargained agreement within the meaning of ERISA, 29 U.S.C. §1145. A copy of the CBA is Exhibit 1 to this Complaint.

10. The Employer has been and remains bound by the CBA.

11. The CBA contains provisions which require the Employer to pay monthly contributions to the Benefit Fund at specified rates, at specified times.

12. The Benefit Fund caused an audit to be performed of the Employer's books and records for the period of January 1, 2003 through December 31, 2005. The Fund's auditors determined that the Employer owed contributions in the aggregate amount of \$8,908.33 for that period, plus interest, in addition to whatever contributions the Employer might already have made for that period.

13. The Benefit Fund transmitted the audit results to the Employer. A copy of the correspondence from Fund Controller Anthony Petrella dated March 27, 2007 is Exhibit 2 to this Complaint.

14. The Employer has failed and refused to pay the amounts determined by the auditors.

15. Thus, the Employer has failed and refused to make the Benefit Fund contributions required by the CBA for the period of January 1, 2003 through December 31, 2005, and the required interest on those amounts.

16. Because the Employer has failed to pay these required contributions, it is delinquent in its payments to the Benefit Fund.

17. The Employer's failure to make its required contributions to the Benefit Fund is a breach of its obligations under the CBA and the Trust Agreement, and is a violation of ERISA, 29 U.S.C. §1145.

18. Under ERISA, 29 U.S.C. §§1132(g)(2) and 1145, the Employer must pay the Benefit Fund the full amount of the delinquent contributions, plus interest, liquidated damages, and the attorneys fees, and costs of this action. The Trustees are also entitled to such other legal or equitable relief as the court deems appropriate pursuant to ERISA, 29 U.S.C. §1132(g)(2)(e).

Count II – Defendant’s Failure To Contribute To The Education Fund

19. Plaintiffs reallege and incorporate by reference the allegations in paragraphs 1 through 18 above.

20. The CBA contains provisions which require the Employer to pay monthly contributions to the Education Fund at specified rates, at specified times.

21. The Education Fund caused an audit to be performed of the Employer’s books and records for the period of January 1, 2003 through December 31, 2005. The Fund’s auditors determined that the Employer owed contributions in the aggregate amount of \$200.33 for that period, plus interest, in addition to whatever contributions the Employer might already have made for that period.

22. The Education Fund transmitted the audit results to the Employer. A copy of the correspondence from Fund Controller Anthony Petrella dated March 27, 2007 is Exhibit 2 to this Complaint.

23. The Employer has failed and refused to pay the amounts determined by the auditors.

24. Thus, the Employer has failed and refused to make the Benefit Fund contributions required by the CBA for the period of January 1, 2003 through December 31, 2005, and the required interest on those amounts.

25. Because the Employer has failed to make these required contributions, it is delinquent in its payments to the Education Fund.

26. The Employer's failure to make its required contribution to the Education Fund is a breach of its obligations under the CBAs and is a violation of ERISA, 29 U.S.C. §1145.

27. Under ERISA, 29 U.S.C. §§1132(g)(2) and 1145, the Employer must pay the Education Fund the full amount of the delinquent contributions plus interest, liquidated damages, and the attorneys fees and costs of this action. The Trustees are also entitled to such legal and other equitable relief as the court deems appropriate pursuant to ERISA, 29 U.S.C. §1132(g)(2)(e).

PRAYER FOR RELIEF

WHEREFORE, Plaintiffs request an Order:

1. Declaring that the Employer owes contributions to the Benefit Fund and Education Fund on behalf of all employees covered by the CBA for all payroll periods from January 1, 2003 to December 31, 2005;

2. Directing the Employer to pay

a. \$8,908.33 to the Benefit Fund;

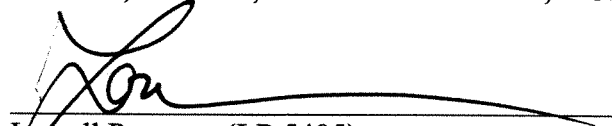
b. \$200.33 to the Education Fund;

c. interest on those amounts, liquidated damages, attorneys fees and costs as required by the Plan and by ERISA 29 U.S.C. §1132(g)(2); and

3. Such other legal and equitable relief to which plaintiffs are entitled.

Dated: June 13, 2007

MEYER, SUOZZI, ENGLISH & KLEIN, P.C.

A handwritten signature in black ink, appearing to read 'Lowell Peterson', is written over a horizontal line.

Lowell Peterson (LP 5405)

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